

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

61099

98326

FILE: B-185024

DATE: JUL 9 1976

MATTER OF:

Johnstone D. Cockerille -- Claim for miscellaneous expense and reimbursement of withholding tax erroneously deducted

DIGEST:

1. Employee claims miscellaneous expense for alteration of draperies and purchase of new rug incident to establishing new residence upon transfer. Claim was denied by our Transportation and Claims Division since employee failed to submit documentation required by Federal Travel Regulations (FTR 101-7) para. 2-3.3a (May 1973) for alteration of draperies and since reimbursement for new items such as rugs is specifically prohibited by FTR para. 2-3.1c. Upon submission of proper documentation, amount claimed for alteration of draperies may be reconsidered. However, denial of cost of new rug was proper, and is sustained.
2. Incident to transfer, employee claims miscellaneous expense for alteration of draperies and cost of new rug. Employer states that \$500 miscellaneous expense was authorized on work sheets utilized in preparing budget estimates on travel authorization. Such figures are mere estimates and are without legal effect to create entitlement. Entitlement to relocation expenses, including miscellaneous expense, flows from and must be determined by statute and implementing regulations.
3. Employee claims reimbursement for withholding taxes deducted from 1975 settlement by our Transportation and Claims Division. Settlement reimbursed employee for lease-breaking expenses in amount of \$100.05. Under 26 U.S.C. 217 (1970), it appears that employee would be permitted deduction and that amount reimbursed would not be subject to withholding. However, 3 Treasury Fiscal Requirements Manual 3020.50 (April 1970) allows adjustment of errors in withholding only during same calendar year in which error was made. Since error was made during 1975 calendar year, adjustment was automatically effected when employee filed income tax returns for that year.

This action results from the appeal by Johnstone D. Cockerille, of the settlement Z-2585648, July 31, 1975, by our Transportation and Claims Division (now Claims Division). The settlement allowed that portion of Mr. Cockerille's claim which was for lease breaking expenses, but denied the remainder of the claim concerning miscellaneous expense.

Mr. Cockerille, an employee of the Department of the Army was transferred from Fort Monmouth, New Jersey, to Washington, D.C., to be effective July 29, 1973. Incident to that transfer the Army allowed credit for, inter alia, a total of \$208.25 miscellaneous expense. An additional \$259.45 was claimed as miscellaneous expenses but was questioned by the Army. The claimed amount constituted the cost of having his draperies altered for his new residence (\$77.45) and the cost of obtaining and installing a new hall rug (\$182). Also questioned by the Army were certain lease breaking expenses incurred by Mr. Cockerille incident to his transfer.

The Claims Division disallowed Mr. Cockerille's claim for the additional \$259.45 miscellaneous expense on the basis that the documentation required by the applicable regulation in support of his claim for alteration of draperies was not provided, and that the cost of obtaining and installing a new rug was also prohibited by such regulation. The Claims Division settlement allowed Mr. Cockerille the amount of \$108.66, which he had claimed as lease-breaking expenses. Federal withholding tax in the amount of \$21.73 was deducted from this amount, with the net to the claimant being \$86.93.

Mr. Cockerille has appealed that portion of the settlement which denied reimbursement of the \$259.45 miscellaneous expense, and also that portion which deducted federal withholding tax in the amount of \$21.73 on the payment of lease-breaking expenses.

Concerning his claim for miscellaneous expenses, Mr. Cockerille states that:

"It is obvious that no attempt to obtain complete facts regarding approval and authorizations pertaining to Miscellaneous Expenses is being made at any point concerned with reimbursement for my PCS move to Washington, D.C. As for authorizations, my advance travel was computed to be \$2,800.00. A

work sheet was prepared showing each item and approved amount that was involved in the PCS move. In this work sheet was approval for \$500.00 for Miscellaneous Expenses, including the rug and drapery items. There can be no question that these items were approved."

An allowance for miscellaneous expense is authorized by Federal Travel Regulations (FPMR 101-7) chapter 2, part 3 (May 1973). For an employee with immediate family, FTR para. 2-3.3a authorizes a miscellaneous expense of \$200 without support or other documentation. Federal Travel Regulation para. 2-3.3b authorizes an allowance in excess of that authorized by FTR para. 2-3.3a, if supported by acceptable documentation of the entire amount claimed, provided that the aggregate amount does not exceed the employee's basic pay for 2 weeks if the employee has an immediate family. It was because Mr. Cockerille did not submit the requisite documentation that his claim for the \$77.45 for alteration of his draperies was disallowed. Upon submission to our Claims Division of acceptable documentation, such as a copy of the paid bill, that part of his claim may be further considered. Under the existing regulations the burden is clearly on the employee to support his claim for reimbursement of such expenditures by providing the requisite documentation.

The \$182 claimed as the cost for the new rug may not be allowed since FTR para. 2-3.1c (5) (May 1973) specifically excludes from reimbursement the cost "of newly acquired items, such as the purchase of installation cost of new rugs or draperies."

Mr. Cockerille also argues in support of his claim that \$500 was approved for miscellaneous expense on a work sheet used in preparing his orders. While the record does not contain a copy of such work papers, we assume they were utilized in preparing the information contained in block 18 of DD form 1614. That block is labeled "ESTIMATED COST" and is used for budget purposes. Such figures are merely estimates and do not constitute "approval." Notwithstanding the above, an employee's entitlement to relocation expenses, including miscellaneous expense, flows from and must be determined by the statute authorizing such expenses, in this case 5 U.S.C. 5724a (1970), and the implementing regulations, which are contained in the Federal Travel Regulations. Thus, the alleged "approval" of miscellaneous expense in the amount of \$500 is without legal effect and establishes no entitlement to miscellaneous expense other than as authorized pursuant to the applicable law and regulations, the effect of which was discussed above.

Mr. Cockerille has also appealed the withholding of Federal taxes on the payment of lease-breaking expenses made by the Claims Division settlement. The Tax Reform Act of 1969 (Public Law 91-172, December 30, 1969) broadened the scope of moving expenses which may, for income tax purposes, be deducted under 26 U.S.C. 217 (1970) by an employee from his gross income, and for which the related reimbursement or allowance is not subject to tax withholding.

Regulations concerning withholding of Federal income taxes for Federal employees are contained in Treasury Fiscal Requirements Manual (Treasury FRM). Specifically, 3 Treasury FRM 3080.10 (March 1970), in effect at the time of the change of official station, provided that:

"TAX WITHHOLDING. An allowance or reimbursement to an employee for moving expenses paid by the employee is not subject to tax withholding if (and to the extent that) the employee may, for income tax purposes, deduct the moving expenses from his gross income. Those moving expenses which may be deducted by the employee (subject to certain conditions), and for which the corresponding allowance or reimbursement is not subject to tax withholding, are the reasonable expenses of traveling (including meals and lodging) and of moving household goods and personal effects, from the former residence to the new residence; of traveling (including meals and lodging) for the purpose of searching for a new residence; of meals and lodging while occupying temporary quarters; or constituting qualified residence sale, purchase, or lease expenses. The aggregate amount allowable as a deduction for the househunting trip and temporary quarters is \$1,000 * * *. The aggregate amount allowable as a deduction for the residence sale, purchase, or lease expenses is \$2,500 * * *, reduced by the aggregate amount allowable for the househunting trip and temporary quarters. Allowances or reimbursements to employees which exceed the above aggregate amounts allowable as deductions, along with reimbursements for any other moving expenses, are subject to tax withholding."

Prior to our Claims Division settlement, Mr. Cockerille apparently had not been reimbursed for "residence sale, purchase, or lease expenses." Thus, the \$108.66 for lease-breaking expenses allowed by our Claims Division settlement would appear to be within the aggregate amount for which a deduction for income tax purposes would appear to be proper, and, pursuant to 3 Treasury FRM 3080.10, that amount would not be subject to tax withholding. However, in the absence of an administrative report from the concerned agency indicating the amount previously reimbursed for these expenses, the Claims Division would be required to withhold taxes on such settlements.

Concerning reimbursement of the amount erroneously withheld, 3 Treasury Fiscal Requirements Manual 3020.50 (April 1970) in effect at the time of change of official station provided that:

"A clerical error in withholding income taxes made in a prior pay period of the current calendar year should be corrected if the employee is still on the agency's payroll. Correction is made by adjusting the deduction for the current pay period by an amount sufficient to offset the error in the withheld taxes and the net pay of the employee. If the error occurred in a prior calendar year or the employee is no longer on the payroll no adjustment should be made. (Adjustment is effected through the filing of the tax return by the employee.) * * *"

Since the error in withholding occurred during calendar year 1975, adjustment should have been reflected in Mr. Cockerille's tax returns for the applicable taxable year.

Paul G. Dembling

For the Comptroller General
of the United States